

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN W. ADAMS,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 251261
Wayne Circuit Court
LC No. 99-007884-01

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

MEMORANDUM.

Defendant appeals as of right his sentence of twenty-four to forty years in prison for second-degree murder, MCL 750.317, imposed on resentencing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of second-degree murder and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. In *People v Adams*, unpublished opinion per curiam of the Court of Appeals, issued December 17, 2002 (Docket No. 228034), another panel of this Court affirmed defendant's convictions but remanded for resentencing on the second-degree murder conviction on the ground that the sentence of thirty-five years to life was invalid. MCL 769.9(2).

On remand, the statutory sentencing guidelines established a minimum term range of 225 to 375 months for the second-degree murder conviction. The trial court sentenced defendant to twenty-four years (288 months) to forty years for second-degree murder, to be served consecutively to the five-year term for felony-firearm, second offense. Defendant received credit for 1,236 days served in jail.

We review a constitutional question de novo. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997).

If a minimum sentence is within the established statutory sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or the use of inaccurate information by the trial court in fashioning the sentence. MCL 769.34(10).

We affirm defendant's sentence. MCL 769.34(10) does not violate the constitutional separation of powers. Const 1963, art 3, § 2; *People v Garza*, 469 Mich 431, 435; 670 NW2d 662 (2003). Furthermore, MCL 769.34(10) does not deny defendant due process. The denial of due process in a criminal context has been characterized as "the failure to observe that fundamental fairness essential to the very concept of justice." *Dodge v Detroit Trust Co*, 300 Mich 575, 618; 2 NW2d 509 (1942). MCL 769.34(10) does not abolish a defendant's right to appeal his sentence. Rather, the statute limits a defendant's right to challenge the sentence to circumstances in which the sentence does not adhere to the legislative requirements.

Defendant's minimum term of twenty-four years for his conviction of second-degree murder was within the sentencing guidelines, and defendant does not allege either an error in the scoring of the guidelines or the use of inaccurate information by the trial court to fashion the sentence. Therefore, we must affirm that sentence. MCL 769.34(10). Defendant is not entitled to resentencing.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen